

BARAFF, KOERNER & OLENDER, P.C.

ATTORNEYS AT LAW

THREE BETHESDA METRO CENTER, SUITE 640

BETHESDA, MARYLAND 20814-5392

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FAX (301) 986-4844

ROBERT L. OLENDER*
JAMES A. KOERNER

May 15, 1996

OF COUNSEL
B. JAY BARAFF*
ROBERT BENNETT LUBIC*

*NOT ADMITTED IN MD

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

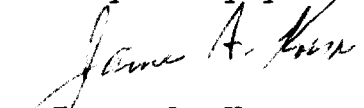
Re: MM Docket No. 95-135

Dear Mr. Caton:

On behalf of Roger L. Hoppe II, there are transmitted herewith an original and four copies of a Petition for Reconsideration in the above-referenced rulemaking proceeding involving a new FM allotment at Honor, Michigan.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner,
Counsel for
Roger L. Hoppe II

cc: Roger L. Hoppe II

26171



**Before the
Federal Communications Commission
Washington, D.C. 20554**

RECEIVED

MAY 15 1996

COMMUNICATIONS SECTION

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 95-135
Table of Allotments)	RM - 8681
FM Broadcast Stations,)	
(Honor, Michigan))	
To: Chief, Allocations Branch		
Policy and Rules Division		
Mass Media Bureau		

PETITION FOR RECONSIDERATION

Roger L. Hoppe, II (Hoppe), by his attorneys, hereby requests reconsideration of the Report and Order in the above-captioned proceeding which allotted FM Channel 264A to Honor, Michigan. As demonstrated herein, the determination was largely based upon an error of fact, depriving Hoppe of the Section 307(b) comparison to which he was entitled. Further, the action failed adequately to consider the fact that the selected site is not available. In support hereof, the following is demonstrated:

The Notice of Proposed Rule Making in this proceeding released August 28, 1995, established October 19, 1995 as the date for comments or counterproposals. On October 18, 1995, Hoppe filed an application to change frequency, class, ERP and antenna location. It was expressly stated that this application was being filed as a counter proposal to the Honor, Michigan proposal.

For reasons unknown, the application was initially given a file number (BPH-951020ID) which indicated that it was received at the Commission on October 20, one day after the established deadline. However, by letter dated December 5, 1995, a copy of which is attached hereto as Exhibit A, Hoppe provided evidence that the application was, in fact, received at the Mellon Bank on October 18, 1995, one day prior to the comment date. That evidence included a copy of the transmittal letter bearing the FCC Mellon Bank stamp dated October 18, 1995. The evidence also included a Federal Express reference showing the package as having been received at 1:40 P.M. on October 18, 1995 at the Mellon Bank.

On the basis of the evidence proffered, the Commission's processing line changed the file number to BPH-951018IF, thereby correcting the earlier error. Attached hereto as Exhibit B is a copy of the Audio Services Division's Status Report as of March 15, 1995, showing the revised file number. Since the processing line has correctly reflected the actual filing date, it was plain error for the Allocations Branch to refuse to accept the same evidence and to treat Hoppe's application as having been timely filed.

In other comments, Theodore G. Hammond demonstrated that the site selected by the rule making proponent was located in the Pere Marquette State Forest, and was close to a new airport. Obviously, the selected site, being in a state forest, is unavailable. This demonstration was cavalierly rejected, noting that if there is undue delay in activating the channel in Honor, the Commission would consider a further petition to remove the channel from the community.

This nonchalant treatment ignores the lesson that should have been learned from the experience with channel 64 at Charlottesville, Virginia. After litigation lasting nearly a decade, and involving untold thousands of dollars, and immense amounts of time, on the part of the private litigants and the Commission, the Court of Appeals recognized that channel 64 could not be used at Charlottesville consistent with the Commission's policy to protect the radio astronomy facility at Green Bank, West Virginia. Recognizing that the Commission's action in denying mutually exclusive applications was a de facto deletion of channel 64, the court remanded the case since the action was not taken in a rule making context. Achenar Broadcasting Co. v. FCC, _____ F.2d _____, 78 RR 2d 1371 (D.C. Cir. 1995). The Commission should not invite applicants to engage in a similar pursuit for this channel.


For the reasons specified herein, it is respectfully submitted that the action taken in the Report and Order should be reconsidered and reversed, with proper consideration being given to the timely filed application of Hoppe and the proponent's failure to specify a usable transmitter site.

Respectfully submitted,

ROGER L. HOPPE, II

Date: May 15, 1996

By


James A. Koerner
His Attorney

BARAFF, KOERNER & OLENDER, P.C.
Three Bethesda Metro Center
Suite 640
Bethesda, Maryland 20814

EXHIBIT A
FILE COPY
BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.

ATTORNEYS AT LAW

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THOMAS B. MAGEE*

OF COUNSEL
B. JAY BARAFF*
ROBERT BENNETT LUBIC*

FAX (301) 986-4844

*NOT ADMITTED IN MD

December 5, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: WZTU, Bear Lake, Michigan

Dear Mr. Caton:

On November 22, 1995, the FCC released a Public Notice accepting for filing an application for the above-referenced station to change channel from 261A to 264C2. A copy of the pertinent page from the Public Notice is enclosed. The file number indicates that it was received on October 20, 1995.

In fact, the application was received at the Mellon Bank on October 18, 1995. Enclosed is a copy of the "stamp and return" copy of the transmittal letter clearly showing the FCC/Mellon stamp as October 18, 1995.

Also enclosed is the Federal Express reference showing the package as having been received at 1:40 p.m. on October 18, 1995, and signed for by E. Zabik.

On behalf of Roger Lewis Hoppe, II, it is respectfully requested that the file number of the application be corrected to reflect the proper date of receipt.

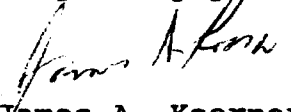
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DEC 5 1995
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.

Mr. William F. Caton
December 5, 1995
Page 2

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner
Counsel for
ROGER LEWIS HOPPE, II

Enclosures

cc: Mr. James Crutchfield (FCC/Room 332/via hand delivery)
Ms. Kathleen Scheuerle (FCC/Room 8314/via hand delivery)

JAK:lmb

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Mr. William F. Caton
December 5, 1995
Page 3

bcc: Mr. Roger Lewis Hoppe, II

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FM BROADCAST STATION APPLICATIONS ACCEPTED FOR FILING
(MINOR CHANGE APPLICATIONS ARE SIMULTANEOUSLY ACCEPTED FOR TENDER)

IN BPH	-9510241C	WQME 98.7 MHZ	POURTALES RADIO PARTNERSHIP ANDERSON, IN	CP TO CHG HAAT: 116.7 METERS (H&V), ERP: 4.5 KW (H&V), TL: 39-58-59-85-42-41
KY BPH	-9510171D	WLSK 100.9 MHZ	LEBANON-SPRINGFIELD B/CSTING CO., INC LEBANON, KY	MOD OF CP (BPH-9401061E) TO CHG HAAT: 90 METERS (H&V) ERP: 15.0 KW (H&V), & CHG FROM DA TO NONDIRECTIONAL
KY BPH	-9510191E	WLCC-FM 102.3 MHZ	JOHN P. NILAND; SPECIAL MASTER MUNFORDVILLE, KY	CP TO CHG HAAT: 125 METERS (H&V) ERP: 2.80KW (H&V) TL: 37-10-41-85-55-15
ME BPH	-9510121B	WJCH 97.7 MHZ	THEODORE ENFIELD WINTER HARBOR, ME	ONE STEP APPLICATION TO CHANGE CHANNEL FROM 249A TO 249B
MI BPH	-9510201D	WZTU 92.1 MHZ	ROGER LEWIS HOPPE II BEAR LAKE, MI	ONE STEP APPLICATION TO CHG CHANNEL FROM 261A TO 264C2
MO BPH	-9510051B	KSLQ-FM 104.5 MHZ	PRIME TIME RADIO WASHINGTON, MO	CP TO CHG HAAT: 175 METERS (H&V), ERP: 1.3 KW (H&V)
NV BPH	-9510061A	KPXC 99.3 MHZ	CLAIRE B. BENEZRA INDIAN SPRINGS, NV	ONE STEP APPLICATION TO CHG CHANNEL FROM 257A TO 257C3
PA BPH	-9510101D	WAIU 100.7 MHZ	WKYN, INC. GALETON, PA	MOD OF CP (BPH-930111MD) TO CHG HAAT: 150 METERS (H&V), ERP: 7.7 KW (H&V), TL: 41-39-36-77-38-02
TN BPH	-9509011D	WRMX 96.3 MHZ	SOUTH CENTRAL COMMUNICATIONS CORP. MURFREESBORO, TN	CP TO CHG CHANGE HAAT: 392 METERS (H&V), ERP: 52.0KW (H&V), TL: 517 BRICK CHURCH LANE, WHITES CREEK, DAVIDSON CTY, TN
VA BPH	-9510131Z	WZBB 99.9 MHZ	WNLB RADIO, INC. ROCKY MOUNT, VA	ONE STEP APPLICATION TO CHG CHANNEL FROM 260A TO 260C3 (PER MM DOCKET # 94-63)
WI BPH	-9509051E	WXEC 93.7 MHZ	BERRY RADIO COMPANY NEKOOSA, WI	ONE STEP APPLICATION TO CHANGE FROM 224A TO CHANNEL 224C
WI BPH	-9510241B	WGLX-FM 103.3 MHZ	WISCONSIN RAPIDS BROADCAST CO., INC. WISCONSIN RAPIDS, WI	CP TO CHG ERP: 100 KW (H&V)

035

- OVER -

FCC/MELLON OCT 18 1995

FILE COPY

BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.

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OF COUNSEL
B. JAY BARAFF*
ROBERT BENNETT LUBIC*

FAX (301) 986-4844

*NOT ADMITTED IN MD

October 17, 1995

Federal Communications Commission
Mass Media Services
P.O. Box 358195
Pittsburgh, Pennsylvania 15251-5195

Ladies and Gentlemen:

On behalf of Roger Lewis Hoppe II, licensee of Radio Station WZTU, Bear Lake, Michigan, there is transmitted herewith in triplicate an application (FCC Form 301) to change frequency, class, ERP, antenna location, and make other changes. This constitutes a one-step upgrade from Channel 261A to Channel 264C2.

Enclosed is a check in the amount of \$650.00 in payment of the required filing fee. Fee processing information is contained on the application form.

Also enclosed is an additional copy of this letter, together with a stamped, self-addressed envelope. It is requested that a date stamped copy of the letter be returned.

This application is being filed as a counterproposal in MM Docket No. 95-135, which proposes to allot Channel 264A to Honor, Michigan. Accordingly, a copy of the application is being served upon the petitioner in that proceeding.

BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.

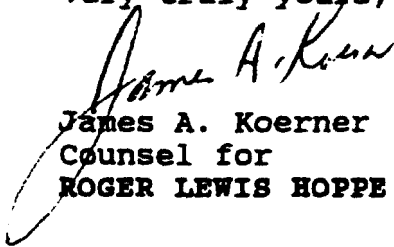
Federal Communications Commission

October 17, 1995

Page 2

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner
Counsel for
ROGER LEWIS HOPPE II

Enclosures

cc: Ms. Jacqueline F. Bourgard (w/ encl.)

JAK:lmb

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BILL TO: BARAFF KOERNER OLENDER HOCHBER
3 BETHESDA METRO CTR STE 640
BETHESDA, MD 20814

REFERENCE ACTIVITY SUMMARY

PAGE 1 OF 3
DATE 10/27/95
INVOICE NO. 5-637-20865 ACCOUNT NO. 1008-8960-9

TRACKING NOS REFERENCE	SENDER'S NAME AND ADDRESS	RECIPIENT INFORMATION AND PROOF OF DELIVERY	PACKAGES & WEIGHT	SERVICES	CHARGES	NET CHARGES
6771535164	BARAFF KOERNER OLENDER HOCHBER 3 BETHESDA METRO CTR STE 640 BETHESDA, MD 20814	WHOLESALE LOCKBOX F C C MELON BANK 825 WILLIAM PENN WAY 27TH FLR PITTSBURGH, PA 15259 A1 DELIVERED: 10/18/95 13:40 SIGNED: E.ZABIK	1/ 2	PRIORITY PAK	20.00	
NO REFERENCE INFORMATION 29217076 627	SHIPPED 10/17/95					20.00
REFERENCE SUBTOTAL			20.00	PAY THIS AMOUNT	20.00	

QUESTIONS? CALL OUR CUSTOMER ACCOUNT SERVICES, 800-622-1147, 7AM - 6PM (CST) MONDAY - FRIDAY (IN MEMPHIS, TN, CALL 901-397-2000).
TO ENSURE PROPER CREDIT PLEASE RETURN THE REMITTANCE ADVICE (1ST PAGE OF THIS INVOICE) WITH YOUR PAYMENT.
MAIL TO: FEDERAL EXPRESS CORP., P.O. BOX 1140, DEPT. A, MEMPHIS, TN, 38101 - 1140

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

**APPLICATION FOR CONSTRUCTION PERMITS TO MODIFY FACILITIES
of AM, FM FULL SERVICE STATIONS and FM TRANSLATORS
STATUS REPORT AS OF: March 15, 1996**

Applications for construction permits to modify the facilities of Broadcast stations currently pending before the Audio Services Division of the Mass Media Bureau can be found on one the two attached lists arranged by file number. The file number corresponds to the date file.

Applications which are otherwise acceptable for filing but which cannot be acted upon are listed on the "Blocked" list by file number along with the reason for their being blocked. The most frequent reasons are: lack of FAA clearance, lack of Canadian or Mexican concurrence, conflict with a pending rulemaking, or some other deficiency such as inadequate showing as to compliance with FCC guidelines for human exposure to radio frequency radiation. Applicants listed on the "Blocked" list who have submitted information or amendments which they believe will resolve the blockage are encouraged to contact James Crutchfield (202-418-2720) of the Audio Services Division so that further processing on that application can be scheduled for prompt action. Drop-off copies of such amendments to Mr. Crutchfield's attention are also encouraged.

These lists will generally be updated and made available to the public on the 1st and 15th of each month. Applications filed within 30 days of the date of the list are not included. Also, petitions for reconsideration and applications for review associated with previously dismissed or returned applications are not listed. The lists also do not include major-change applications.

If more information is required, please contact the Audio Services Division Customer Service Representatives:

Assignment and Transfer Applications	(202) 418-2782
Radio Renewal Applications	(202) 418-0186
Other Applications	
AM Service	(202) 418-2795
FM Service	(202) 418-2730
FM Translator Service	(202) 418-2795
Silent Station Information	(202) 418-2795
Engineering Database	(202) 418-2795
Other Inquiries	(202) 418-2782

BLOCKED AUDIO FACILITIES-CHANGE APPLICATIONS AS OF [03/15/1996]

* NEXT TO CALL SIGN INDICATES AMENDMENT FILED

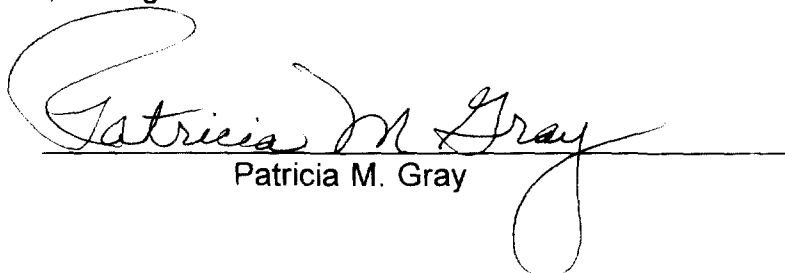
CALL SIGN	Am Fm Tran	CITY	ST	PREFIX	FILE NUMBER	PROBLEM
WPGA	F	PERRY	GA	BPH	951013IC	FAA
KQMC	F	BRINKLEY	AR	BPH	951013ID	FAA
WBAM	F	MONTGOMERY	AL	BPH	951016IE	Rulemaking Conflict
WLBI	F	WARRIOR	AL	BPH	951016IF	Rulemaking Conflict
KAAM	A	PLANO	TX	BMP	951017AF	Awaiting Amendment
WYYB	F	DICKSON	TN	BPH	951018ID	Referred to OET
KWQJ	F	ANCHORAGE	AK	BPH	951018IE	Related Blocked App
WZTU	F	BEAR LAKE	MI	BPH	951018IF	Rulemaking Conflict
RGPQ	F	MONTICELLO	AR	BMPH	951020IC	FAA
WKKB	F	KEY COLONY BEAC	FL	BPH	951023IA	Rulemaking Conflict
WQME	F	ANDERSON	IN	BPH	951024IC	FAA
WSRM	F	COOSA	GA	BMPH	951024ID	Other
WLAY	F	MUSCLE SHOALS	AL	BPH	951025IB	Awaiting Amendment
WXOQ	F	SELMER	TN	BPH	951025IC	Awaiting Amendment
WDYL	F	CHESTER	PA	BMPH	951025ID	Related Blocked App
KCEY	F	HUNTSVILLE	TX	BPH	951025IE	Awaiting Amendment
KBYO	F	TALLULAH	LA	BPH	951025IZ	Awaiting Amendment
KWQL	F	DISHMAN	WA	BMPH	951027IC	Awaiting Amendment
WDSP	F	ARLINGTON	NY	BPH	951030IC	Awaiting Amendment
KKRF	F	STUART	IA	BPH	951031IC	Awaiting Amendment
WWSL	F	PHILADELPHIA	MS	BPH	951031ID	FAA
KBIC	F	RAYMONDVILLE	TX	BMPH	951101IA	Related Blocked App
WAQY	F	SAUCIER	MS	BMPED	951102IB	FAA
KKPL	A	OPPORTUNITY	WA	BP	951103AA	Related Blocked App
KAFW	F	WILSON	AR	BMPH	951103IC	Awaiting Amendment
KAKT	F	RIVERSIDE	CA	BPH	951107IC	Related Blocked App
KBAL	F	SAN SABA	TX	BMPH	951109IH	Awaiting Amendment
KCQQ	F	DAVENPORT	IA	BMPH	951113IB	Related Blocked App
NEW	F	DIMMITT	TX	BMPH	951113ID	In line in Queue
WTRJ	F	TROY	OH	BPH	951113IE	Request of Applicant
K201CM	T	SPARKS	NV	BMPFT	951113TA	Request of Applicant
KFIR	A	SWEET HOME	OR	BMP	951120AH	Awaiting Amendment
WIAR	F	LELAND	MI	BPH	951120II	Awaiting Amendment
* KMKE	F	GRAND JUCTION	CO	BPH	951120IP	Awaiting Amendment
WAJM	F	ATLANTIC CITY	NJ	BMPED	951121IB	FAA
KROK	F	DE RIDDER	LA	BPH	951121ID	FAA
KEZB	F	HEMPSTEAD	TX	BMPH	951130IG	Awaiting Amendment
WBBK	F	BLAKELEY	GA	BMPH	951204IF	Related Blocked App
KCYL	A	LAMPASAS	TX	BP	951213AB	Awaiting Amendment
W205AS	T	GULF BREEZE	FL	BMPFT	960116TP	Request of Applicant

TOTAL NUMBER OF RECORDS = 240

CERTIFICATE OF SERVICE

I, Patricia M. Gray, office manager, in the law firm of Baraff, Koerner & Olender, P.C., do hereby certify that copies of the foregoing Petition for Reconsideration was served this 15th day of May, 1996, via first class United States mail, postage prepaid, upon the following:

Ms. Jacqueline F. Bourgard
P.O. Box 365
Mesick, Michigan 49668


Patricia M. Gray

FORMSJAK26171.PET